

Introduced by Senator O'Connell

February 13, 1998

An act to amend Sections 23220, 23221, 23222, 23223, 23225, and 23226 of the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

SB 1639, as introduced, O'Connell. Off-highway motor vehicles: alcohol.

(1) Existing law prohibits engaging in specific activities involving alcoholic beverages while in a motor vehicle upon a highway. Existing law also regulates the operation of motor vehicles that are not registered under the Vehicle Code because they are used exclusively off the highways (off-highway vehicles subject to identification).

This bill would expand these prohibitions to include engaging in those activities while in an off-highway motor vehicle that is subject to identification.

The bill would also prohibit the possession of marijuana in an off-highway motor vehicle in a provision under existing law that prohibits the possession of marijuana while driving a motor vehicle upon a highway.

Because this bill would expand the scope of existing crimes, the bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 23220 of the Vehicle Code is
2 amended to read:

3 23220. No person shall drink any alcoholic beverage
4 ~~while~~ *under the following conditions:*

5 (a) *While driving a motor vehicle upon any highway.*

6 (b) *While driving an off-highway motor vehicle that is*
7 *subject to identification, as described in subdivision (a) of*
8 *Section 38010.*

9 SEC. 2. Section 23221 of the Vehicle Code is amended
10 to read:

11 23221. No person shall drink any alcoholic beverage
12 ~~while~~ *under the following conditions:*

13 (a) *While in a motor vehicle upon a highway.*

14 (b) *While in an off-highway motor vehicle that is*
15 *subject to identification, as described in subdivision (a) of*
16 *Section 38010.*

17 SEC. 3. Section 23222 of the Vehicle Code is amended
18 to read:

19 23222. (a) No person shall have in his or her
20 possession on his or her person, while driving a motor
21 vehicle upon a highway *or while driving an off-highway*
22 *motor vehicle that is subject to identification, as*
23 *described in subdivision (a) of Section 38010*, any bottle,
24 can, or other receptacle, containing any alcoholic
25 beverage which has been opened, or a seal broken, or the
26 contents of which have been partially removed.

27 (b) Except as authorized by law, every person who
28 possesses, while driving a motor vehicle upon a highway
29 *or while driving an off-highway motor vehicle that is*
30 *subject to identification, as described in subdivision (a) of*
31 *Section 38010*, not more than one avoirdupois ounce of
32 marijuana, other than concentrated cannabis as defined
33 by Section 11006.5 of the Health and Safety Code, is guilty
34 of a misdemeanor and shall be punished by a fine of not
35 more than one hundred dollars (\$100). Notwithstanding

1 any other provision of law, if the person has been
2 previously convicted three or more times of an offense
3 described in this subdivision during the two-year period
4 immediately preceding the date of commission of the
5 violation to be charged, the previous convictions shall also
6 be charged in the accusatory pleading and, if found to be
7 true by the jury upon a jury trial or by the court upon a
8 court trial or if admitted by the person, Sections 1000.1
9 and 1000.2 of the Penal Code are applicable to the person,
10 and the court shall divert and refer the person for
11 education, treatment, or rehabilitation, without a court
12 hearing or determination or the concurrence of the
13 district attorney, to an appropriate community program
14 which will accept the person. If the person is so diverted
15 and referred, the person is not subject to the fine specified
16 in this subdivision. In any case in which a person is
17 arrested for a violation of this subdivision and does not
18 demand to be taken before a magistrate, the person shall
19 be released by the arresting officer upon presentation of
20 satisfactory evidence of identity and giving his or her
21 written promise to appear in court, as provided in Section
22 40500, and shall not be subjected to booking.

23 SEC. 4. Section 23223 of the Vehicle Code is amended
24 to read:

25 23223. No person shall have in his or her possession on
26 his or her person, while in a motor vehicle upon a highway
27 *or while in an off-highway motor vehicle that is subject to*
28 *identification, as described in subdivision (a) of Section*
29 *38010*, any bottle, can, or other receptacle, containing any
30 alcoholic beverage which has been opened, or a seal
31 broken, or the contents of which have been partially
32 removed.

33 SEC. 5. Section 23225 of the Vehicle Code is amended
34 to read:

35 23225. It is unlawful for the registered owner of any
36 motor vehicle, or the driver if the registered owner is not
37 then present in the vehicle, to keep in a motor vehicle,
38 when the vehicle is upon any highway *or to keep in an*
39 *off-highway motor vehicle that is subject to identification,*
40 *as described in subdivision (a) of Section 38010*, any

1 bottle, can, or other receptacle containing any alcoholic
2 beverage which has been opened, or a seal broken, or the
3 contents of which have been partially removed, unless
4 the container is kept in the trunk of the vehicle, or kept
5 in some other area of the vehicle not normally occupied
6 by the driver or passengers, if the vehicle is not equipped
7 with a trunk. A utility compartment or glove
8 compartment shall be deemed to be within the area
9 occupied by the driver and passengers.

10 This section shall not apply to the living quarters of a
11 housecar or camper.

12 SEC. 6. Section 23226 of the Vehicle Code is amended
13 to read:

14 23226. It is unlawful for any person to keep in the
15 passenger compartment of a motor vehicle, when the
16 vehicle is upon any highway *or to keep in any*
17 *compartment of an off-highway motor vehicle that is*
18 *subject to identification, as described in subdivision (a) of*
19 *Section 38010*, any bottle, can, or other receptacle
20 containing any alcoholic beverage which has been
21 opened, or a seal broken, or the contents of which have
22 been partially removed.

23 This section shall not apply to the living quarters of a
24 housecar or camper.

25 SEC. 7. No reimbursement is required by this act
26 pursuant to Section 6 of Article XIII B of the California
27 Constitution because the only costs that may be incurred
28 by a local agency or school district will be incurred
29 because this act creates a new crime or infraction,
30 eliminates a crime or infraction, or changes the penalty
31 for a crime or infraction, within the meaning of Section
32 17556 of the Government Code, or changes the definition
33 of a crime within the meaning of Section 6 of Article
34 XIII B of the California Constitution.

35 Notwithstanding Section 17580 of the Government
36 Code, unless otherwise specified, the provisions of this act
37 shall become operative on the same date that the act
38 takes effect pursuant to the California Constitution.

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